Opposition through the backdoor? The case of national non-compliance with EU directives

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Founded in 1963 by two prominent Austrians living in exile – the sociologist Paul F. Lazarsfeld and the economist Oskar Morgenstern – with the financial support from the Ford Foundation, the Austrian Federal Ministry of Education, and the City of Vienna, the Institute for Advanced Studies (IHS) is the first institution for postgraduate education and research in economics and the social sciences in Austria. The **Political Science Series** presents research done at the Department of Political Science and aims to share "work in progress" before formal publication. It includes papers by the Department's teaching and research staff, visiting professors, graduate students, visiting fellows, and invited participants in seminars, workshops, and conferences. As usual, authors bear full responsibility for the content of their contributions.

Das Institut für Höhere Studien (IHS) wurde im Jahr 1963 von zwei prominenten Exilösterreichern – dem Soziologen Paul F. Lazarsfeld und dem Ökonomen Oskar Morgenstern – mit Hilfe der Ford-Stiftung, des Österreichischen Bundesministeriums für Unterricht und der Stadt Wien gegründet und ist somit die erste nachuniversitäre Lehr- und Forschungsstätte für die Sozial- und Wirtschafts-wissenschaften in Österreich. Die **Reihe Politikwissenschaft** bietet Einblick in die Forschungsarbeit der Abteilung für Politikwissenschaft und verfolgt das Ziel, abteilungsinterne Diskussionsbeiträge einer breiteren fachinternen Öffentlichkeit zugänglich zu machen. Die inhaltliche Verantwortung für die veröffentlichten Beiträge liegt bei den Autoren und Autorinnen. Gastbeiträge werden als solche gekennzeichnet.

Abstract

Scholars of European Integration have recently shown increasing interest in the implementation phase of the EU policy cycle, particularly in the extent of, and the reasons for, national non-compliance with European rules. According to an intergovernmentalist perspective, implementation problems should only occur when member states failed to assert their interests in the European decision-making process. Focusing on 23 infringement procedures from the area of labour law, we show that such "opposition through the backdoor" does indeed occur occasionally. However, we demonstrate that opposition at the "rear end" of the EU policy process may also arise without prior opposition at the "front end". Our findings indicate that national non-compliance may also be due to administrative shortcomings, interpretation problems, and issue linkage.

Zusammenfassung

Die Europaforschung hat sich in den letzten Jahren zunehmend für die Implementationsphase des EU-Politikzyklus und insbesondere für Ausmaß und Ursachen von Verstößen gegen europäische Vorschriften interessiert. Aus der Perspektive intergouvernementalistischer Integrationstheorien sollten solche Implementationsprobleme nur auftreten, wenn ein Mitgliedstaat seine Interessen im Rahmen des EU-Entscheidungsprozesses nicht durchsetzen konnte. Auf der Grundlage einer empirischen Analyse von 23 Vertragsverletzungsverfahren aus dem Bereich des Arbeitsrechts zeigen wir, dass solche Fälle von „Opposition durch die Hintertür" tatsächlich vorkommen. Gleichzeitig machen unsere Ergebnisse aber deutlich, dass Opposition bei der Implementation auch ohne vorherigen Widerstand bei der Entscheidungsfindung auftreten kann. Wir weisen darauf hin, dass Verstöße bei der Umsetzung von EU-Richtlinien auch durch administrative Ineffizienz, Interpretationsprobleme oder die Verknüpfung mit anderen nationalen Reformen entstehen können.

Keywords

Compliance with EU law, transposition of EU Directives, social policy, implementation.

Schlagwörter

Befolgung von EU-Recht, Umsetzung von EU-Richtlinien, Sozialpolitik, Implementation.

Notes

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Contents

1. Introduction: Questions and research design

Scholars of European Integration have recently shown increasing interest in the *effects of Europeanization* on domestic systems of governance. This perspective has produced a number of studies dealing with the impact of membership in the European Union (EU) on such phenomena as national parliaments, party systems, state-society relationships or territorial state structures (for example, Schmidt 1999; Falkner 2000; Börzel 2001a; Mair 2001; Maurer/Wessels 2001; Raunio/Hix 2001). In this context, scholars have also turned their attention to the *patterns of adjustment to European policies*, and in particular to the national implementation of EU law (for example, Ciavarini Azzi 1985; Siedentopf/Ziller 1988a; 1988b; Schwarze et al. 1990; Schwarze et al. 1991; 1993; Héritier et al. 1996; Héritier et al. 2001; Duina 1997; 1999; Duina/Blithe 1999; Jordan 1999; Jordan et al. 1998; Börzel 2000b; Knill/Lenschow 2000b; Haverland 2000; Dimitrakopoulos 2001a; 2001b). With regard to implementation, Directives are of particular interest. They are not directly applicable at the national level (as Regulations are), but have to be incorporated into national law first. Therefore, the focus of this paper lies on the transposition of European Directives, more specifically: on the meaning of transposition failures. The latter represent one facet of the broader phenomenon of non-compliance[1] with EU law.

Disregard of national duties concerning the transposition of Directives may have various reasons. According to the mainstream of the more recent literature on Europeanisation, adjustment processes are expected to be more problematic if the degree of *misfit* between European rules and existing institutional and regulatory traditions is high (Börzel 2000a; 2000b; Duina 1997; 1999; Knill 2001; Knill/Lenschow 1999; 2001). From this perspective, national governments, parliaments and administrations are expected to act as "guardians of the status quo, as the shield protecting national legal-administrative traditions" against intrusion from the European level (Duina 1997: 157; for similar statements see also Börzel 2000a: 224–225; 2000b: 147; Knill/Lenschow 2000a: 261; 2001: 126). Following this line of reasoning, deliberate opposition of national actors during the transposition phase should thus be expected if European Directives demand significant changes to the pre-existing national arrangements.

On a more general level, one could argue that whatever the degree of misfit with the new EU norms and standards, the implementation of European Directives confronts two political systems. This conforms to a view of the EU as a federal phenomenon with two[2] distinct levels of government (national and European). This multi-layer perspective[3] suggests that

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1 For work in the broader field of non-compliance, see for example Mendrinou (1996), Stone Sweet (1999), Zürn (1999), Dimitrakopoulos (2001), Börzel (2000;2001b), Börzel/Risse (2001).

2 At least, since some member states have further lower levels of internal government.

3 It is crucial to highlight that this "multi-layer" perspective is quite different from the "multi-level" governance approach (Marks et al. 1996; Hooghe/Marks 2001)!

the preference formation processes of the lower-level polity and the higher-level polity are clearly distinct. This implies that in cases where a national government is unsuccessful in "uploading" its own preferences at the EU level as the template for the joint measure or standard, it will try to resist during the "downloading" process, i.e. later at the implementation stage.[4] Only in those cases without national protest against a specific measure during EU-level decision-making, implementation should be unproblematic according to such a mainly intergovernmentalist[5] perception. Non-transposition could hence be considered a means to *protest against being outvoted* or otherwise "minoritised" in the EU's policy process, as *"opposition through the backdoor"*.[6]

Older contributions to the debate about implementation processes in the European context, which have received less scholarly attention in recent years, had a different focus. They expected implementation problems to be rather due to *administrative shortcomings* (Ciavarini Azzi 1985; Siedentopf/Ziller 1988a; 1988b; Schwarze et al. 1990; Schwarze et al. 1991; 1993). In addition, legal scholars have highlighted concerns about the legal quality of EU Directives (for example Weiler 1988). Since Directives are typically the result of long discussions and elaborate compromises between the fifteen member states, they argue that such texts may be less than clear and may leave room for divergent interpretations. This suggests that *mis-interpretation* can be a factor leading to incorrect or delayed transposition into national law (and, if the transposition does not apply a clear-cut interpretation itself, to major application problems).

Studying one particular policy area, our paper will shed light on problematic national adjustment processes and will discuss the explanatory factors of why member states do not transpose correctly and/or timely. Is that kind of national non-compliance caused by deliberate opposition of national actors who want to protect their "national systems", as suggested in much of the recent misfit-oriented literature and by the multi-layer perspective on European integration? What role do administrative factors play? And in how far do mis-interpretations account for transposition failure? *We argue that all of these factors, and more, have some explanatory power but that not one is able to cover all empirical cases of non-compliance in our sample.*

The empirical material for this paper stems from a multi-annual collaborative research project which analyses the national transposition, enforcement, and application of six EU[7] labour law Directives in all fifteen member states.[8] The Directives concern written information on

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4 For the uploading vs. downloading terminology see Börzel (2002).

5 For intergovernmentalism in European integration research, see most importantly (Moravcsik 1993).

6 Note that we chose the framing for this paper inspired by the outline for the open section of this conference.

7 In this paper we only look into issues connected to the "first pillar" of the European Union. Therefore, in a strict sense the expression "European Communities" would be more accurate. Nevertheless, we will use "European Union" throughout the paper, because it has become a common term in everyday usage.

8 For further details on the project see http://www.mpi-fg-koeln.mpg.de/fo/ multilevel_en.html#Proj5.

employment conditions; parental leave; working time; and the protection of pregnant, young and part-time workers.

The directive on written information on employment conditions wants to create more transparency on the labour market. To this aim the directive assigns the employee the right to receive essential information on his or her working conditions in written form. Expatriate workers are entitled to specific information on their work abroad.[9]

The directive on pregnant workers prohibits the exposure of pregnant and breast feeding employees to work or substances that imply harm for mother and child. To avoid this, transfer to another job or paid suspension are envisaged. Pregnant workers are not allowed to do dangerous night work. Every worker who has given birth is entitled to 14 weeks maternity leave (which have to include at least two weeks of compulsory maternity leave) and dismissal is only allowed for reasons not related to pregnancy.[10]

The working time directive fixes daily and weekly maximum working hours and rest periods. The weekly maximum of 48 hours can be calculated over a reference period of four months. Exemptions from the working and rest periods can be granted for specific groups of workers and on the basis of collective or company level agreements. The directive also grants special protection to night workers and four weeks annual leave to all workers. Doctors in training and sectors such as air, road, rail and sea transport are not covered by the directive.[11]

The directive on young workers protection contains a general prohibition of child work that can only be exempted from in exceptional cases of light work. Daily and weekly maximum working time limits and rest periods are fixed and night work is limited for young workers under 18. Time worked for different employers has to be counted in an additive way. For some groups of young workers exemptions from these limits can be introduced. Children and young workers have to be protected against activities that would harm their health and safety. This can be determined by a medical assessment, while some especially dangerous activities are absolutely prohibited.[12]

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9 Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship, OJ L 288, 18 October 1991, 32–35.

10 Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC), OJ L 348, 28 November 1992, 1–8.

11 Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organization of working time, OJ L 307, 13 December 1993, 18–24.

12 Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work, OJ L 216, 20 August 1994, 12–20.

Under the parental leave directive father and mother are given an individual right of at least three months parental leave to take care of their (natural or adopted) child. They have the right to return to the same or an equivalent work place. Moreover workers have the right to leave for urgent family reasons such as unexpected sickness of a family member. The directive also contains recommendations for flexible leave forms and continuity of social security coverage during the leave.[13]

The part-time directive fixes a general non-discrimination principle for part-time workers compared to full time workers in similar positions – unless such unequal treatment is justified by 'objective reasons'. Access to particular conditions of employment can be made dependent on the time worked, the period worked or on earnings. Moreover the directive contains recommendations in regard to equal treatment in statutory social security systems and facilitation and stimulation of part time work.[14]

Our research design covering in sum 90 cases allows us to analyse, in a comparative perspective, specifics of both Directives and individual member states. A large number of interviews have been conducted with experts from the administrations, interest groups and labour inspections in all member states. We collected material on the pre-existing national standards (in order to assess the potential impact of the new European directives), on the adaptation process (to learn which actors prevailed and why non-compliance took place), and on the national experts' views as to the usefulness of the changes induced by the EU. This project is unique in that it performs a full survey for a number of Directives, rather than studying only a selection of member states as common in the literature. Our joining of forces allowed a broader range of comparison than currently available outside statistical studies.[15]

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13 Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC, OJ L 145, 19 June 1996, 4–9.

14 Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC – Annex: Framework agreement on part-time work, OJ L 014, 20 January 1998, 9–14.

15 The latter can, however, not offer the same kind of information as available on the basis of qualitative studies. Most importantly, the reasons for non-transposition are unknown from a quantitative comparative perspective. At best, statistical correlations can be calculated that relate factors such as the number of veto points in a member state to the implementation performance. Whether the connection between outcome and assumed explanatory factor indeed holds in practice, remains an unanswered question. This is why we tried to combine qualitative case studies with a rather high number of cases.

Table 1: The Directives and their infringement proceedings

Directive	End of Transposition Period	Letters of Formal Notice	Reasoned Opinions	Cases Referred to ECJ	ECJ Decisions
Work Contract (91/533/EEC)	30.6.1993	– B, D, F, GR, IRL, I, LUX, NL, P, UK	– I	–	–
Pregnant Workers (92/85/EEC)	19.10.1994	– B, D, F, GR, I, LUX, P – **E[1], F, FIN, GR[2], IRL, I, LUX, S**	– LUX – **F[3], IRL, I[4], LUX, S**	– LUX	–
Working Time (93/104/EC)	23.11.1996	– A, F, GR, IRL, I, LUX, P, UK – **DK, S, UK**	– F, GR, I, LUX, P, UK – **DK**	– F, I, LUX	– F, I
Young Workers (94/33/EC)	22.6.1996	– A, F, GR, I, LUX, P, S[4], UK	– F, I, LUX, P, UK	– F, I, LUX	– F, LUX
Parental Leave (96/34/EC)	3.6.1998 UK: 15.12.1999	– D, GR, IRL, I, LUX, P, UK – **IRL, UK**	– I, LUX – **IRL, UK**	– I	–
Part-Time (97/81/EC)	20.1.2000 UK: 7.4.2000	–	–	–	–
		total: 53	total: 23	total: 8	total: 4

Notes:

The normal size letters refer to infringement procedures for *non-notification*, while the bold letters indicate that the procedure is due to *incorrect* transposition.

1 We still need confirmation if this case has reached the stage of a reasoned opinion.

2 The existence of this letter of formal notice is likely since the Commission announced to send a reasoned opinion in March 1999. This step has not been taken yet, but it should at least have been preceded by a letter of formal notice.

3 The decision to refer this case to the ECJ has already been taken, but the Court has not officially opened the procedure yet.

4 We still need confirmation for these cases.

In this paper, we can for reasons of time and space only present one (quite particular) cut through our material. In contrast to much of our forthcoming work, we have chosen an outcome-oriented approach here.[16] That is, we do not look at the amount and kind of misfit created by a specific Directive in a particular member state, and relate this (and other factors forming part of the pluri-theoretical approach of our overall research project) to the implementation performance. Here, we only look at those cases where a particular procedural outcome resulted from the national implementation process (or its absence), i.e. those cases where the Commission actually initiated infringement proceedings according to article 226 ECT (former article 169) and pursued them at least until the stage of a "reasoned opinion".[17] These are the crucial cases of national "misbehaviour" – either non-notification, non-transposition, late transposition, or substantially incorrect transposition[18] – as recognised by the responsible EU-level "watchdog", the European Commission.[19]

For the sake of a more interesting presentation, we will not go through one-by-one those 23 cases of advanced infringement procedures that resulted from our sample of six EU labour law Directives. Since our analysis highlights a set of *four factors* that account (singularly or in combination) for all of the cases, we designed the paper to proceed along these lines. The sections on non-compliance as opposition (2 below); non-compliance as administrative shortcoming (3); non-compliance due to issue linkage (4); and non-compliance due to interpretation problems (5) each present the most interesting cases of their category. The conclusions (6) will put the findings into perspective.

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16 In a procedural sense, not a material one. The latter would rather look at the significance of the changes actually performed at national level.

17 Each infringement procedure includes the following stages: It starts with a letter of formal notice and can be followed by a reasoned opinion, a transferral to the European Court of Justice (ECJ), and finally a ruling by the ECJ (see Articles 226 ECT).

18 The European Commission differentiates between infringement procedures for non-notification of the national transposition measures, cases with incorrect transposition and cases with incorrect application. However, for the purpose of this paper it is not necessary to follow the distinction between non-notification and incorrect transposition since here we only study cases of *advanced* infringement procedures, where failure of notification as the real reason (as opposed to the revealed reason for a failure to implement) is not a likely scenario. For the Directives under scrutiny here, no cases of infringement procedures for incorrect application exist.

19 The data on infringement procedures initiated by the European Commission are based on the annual *Reports on Monitoring the Application of Community Law*, published by the European Commission (Kommission der Europäischen Gemeinschaften 1994; 1995; 1996; 1997; 1998; Commission of the European Communities 1999b; Commission des Communautés Européennes 2000; 2001; 2002) as well as from press releases and information collected in the interviews. Note that these data do not necessarily reveal all cases of non-compliance in the member states. This can be due either to insufficient information or to a political decision taken by the Commission. This problem cannot be tackled adequately within the scope of this paper, where we chose official infringement procedures to determine our sample of non-compliance cases. In later work, we will also discuss those cases where the Commission may have overlooked or downplayed evidence for non-compliance.

2. Non-compliance as opposition

Deliberate opposition by national governments is one possible reason why some member states fail to comply with European standards. In our sample we found *two variants* of this pattern. On the one hand, it can be outright "opposition through the backdoor". In other words, these are cases where governments which had not wanted a Directive (or specific aspects thereof) later do not implement it correctly (below a). On the other hand, opposition can be due to the wish to still protect the older national patterns but without any dispute at the prior decision-making stage (below b).

a) Related to our six Directives to be implemented in the 15 member states (90 cases), only two cases are clear-cut examples of *opposition through the backdoor* in which the respective national government fought hard against the Directive in Brussels and, after having lost the battle at the European level, tried to win it back at the implementation stage. This confrontation strategy was used by the conservative *UK government* in regard to the *working time* and the *young workers* Directives. In both cases, John Major's team was fundamentally opposed to the draft Directives during the European negotiations (see e.g. Cassell 1992; EIRR 1993a; 1993b; 1993c) because the Commission proposals ran counter to its deregulatory *laissez-faire* approach to economic and labour-market policy. As a result of the Commission's "treaty-base game" (Rhodes 1995: 99), the Directives had been tabled as a health and safety measure and could therefore be passed by a qualified majority. Unlike with many other initiatives at the time, the UK government thus could not block the proposals.

   After the Directives had been adopted in Brussels, the Tory government was not willing to accept the defeat that they had suffered at the European level. In March 1994, the UK challenged the *working time Directive* in the European Court of Justice, seeking to annul the Directive on the grounds that it had been issued on a wrong legal basis. A few days before the end of the implementation deadline in November 1996, however, the European judges rejected all major points of the UK challenge.[20] What matters here is that in the meantime, the Conservative government did not take any preparatory steps with regard to implementation of the Directive. On the contrary, the Tory government openly refused to accept the Court ruling (House of Commons 1996: Cols 152–155) and did not take any decisive steps to comply with the Directive until the end of its office in May 1997 (interview GB4:285–300). The incoming Labour government, who had made transposition of the Directive a pre-election manifesto commitment (interview GB3:532–534), then implemented the Directive within less than one and a half years.[21]

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[20] Judgment of the Court of 12 November 1996, United Kingdom of Great Britain and Northern Ireland v Council of the European Union, Case C–84/94, European Court Reports 1996, p. I–05755.

[21] The Working Time Regulations 1998, Statutory Instrument 1998 No. 1833.

As a consequence of the delaying tactics of their Conservative predecessors, however, the Blair government could not help exceeding the implementation deadline by almost two years, which triggered the initiation of an infringement proceeding against the UK.[22]

Through the UK's reaction to the young workers Directive can be clearly seen that the deliberate opposition by the Tory government was in fact caused by the liberal economic-policy approach of the Conservative Party and not (or at least not primarily) by the desire to fend off economically expensive reforms imposed by Europe. In contrast to the working time Directive, which had made considerable reforms of the deregulated British labour market necessary,[23] the young workers Directive required only minor changes in the UK at this point in time since the government had secured a four-year opt-out from some of the core standards of the Directive. Nevertheless, the Major government only transposed those provisions of the Directive that they accepted politically (i.e. the health and safety aspects of the Directive narrowly defined).[24] Due to the Conservative government's opposition, and in striking similarity to the working time case, the remaining parts of the Directive were transposed with considerable delay only after the Labour government had assumed power.[25]

b) A number of our cases of purposeful resistance were, by contrast, due to governments trying to *defend their existing rules* and regulations against European adaptation pressure without significant protest having occurred at the EU-level decision-making stage. The Scandinavian countries Finland and Sweden as well as Austria that have not been members of the EU before 1995 automatically fall into this category for four of the directives studied here, since they have been absent from the decision making processes. Other countries chose not to protest either because of inadvertence or political reasons.

This pattern could be observed, for example, in the context of the implementation of the *pregnant workers* Directive in *France*. Here, the government refused to introduce a specific leave for health and safety reasons connected to pregnancy for several years, until the Commission initiated an infringement proceeding (Commission of the European Communities 1999a: 8).[26] France argued that according to the *Code du Travail* (L 122–26)

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22 Letter of formal notice for non-transposition (1997) and reasoned opinion for non-transposition (December 1997 or early 1998).

23 Even considering that the UK had pushed through a number of far-reaching exemptions and derogations.

24 The Health and Safety (Young Persons) Regulations 1997, Statutory Instrument 1997 No. 135.

25 Letter of formal notice for non-transposition (1997) and reasoned opinion for non-transposition (December 1997 or early 1998), decision to stop procedure (2.12.1998).

26 Letter of formal notice for incorrect transposition (11.12.1998), reasoned opinion for incorrect transposition (6.8.1999), decision for transferral to the ECJ (2000), but no seizure by ECJ, instead additional reasoned opinion (11.10.2001) (Commission des Communautés Européennes 2002). We are aware that non-compliance

maternity leave could be extended for up to six additional weeks in cases of pathological pregnancies and on grounds of a medical certificate, and that therefore the national regulation and practice did not need to be changed. Besides the strict misfit to the standard on *preventive* leave for health and safety reasons connected to pregnancy, this national regulation was not in line with the overall policy model of the EU Directive, since the preamble of the Directive states that regulation "should in no circumstances be interpreted as suggesting an analogy between pregnancy and illness". Even though the trade unions had pointed to this incompatibility between the French regulation and the EU Directive (interview F6:467–491), the French government stated that the national model provided sufficient or even better protection. It was not until February 2001 that France gave in to European pressure and amended its legislation accordingly.[27]

A similar constellation characterised the transposition of the *young workers* Directive in *France.* Here, the implementation process started years after the transposition period had expired. The official argument put forward to explain the delay in the transposition was a "lack of adequate legal support".[28] Implicitly such an argument transmits an image of inadvertence or administrative inefficiency. However this seems a weak excuse – a lack of legal expertise in the French Labour Ministry is not likely – and cannot explain why inertia prevailed for more than five years. A national expert reported that the real reason for the delays was that the government consciously decided not to transpose the Directive (interview F2:1003–1031). Even left trade unions supported this strategy of deliberate opposition to the EU Directive (interview F3:681–690). Thus the actors in the national arena consented that the existing French model could provide at least as much protection for young workers as the standards in the EU Directive, even if they clearly differed in some aspects – such as the definition of 'additive working time' or the introduction of stricter rules for 14–16 year olds. The transposition only took place after the ECJ had condemned France for non-transposition of this Directive on 18 May 2000 (C–45/99)[29] and the Commission had initiated a second infringement procedure (according to Art. 228 EC-Treaty) in the same

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also existed for the Regulation of female night work, in general, but since the whole debate about the lifting of the night work ban for women in France is more related to the equal treatment Directive (76/207/ECC) we limit the analysis to the reasons for the infringement procedure brought forward by the Commission, thus to the leave for health and safety reasons connected with pregnancy.

27 O*rdonnance relative aux femmes enceintes au travail et au congé maternité* of 21 February 2001 (*Journal Officiel* of 24 February 2001).

28 "Ces dispositions devaient faire l'objet d'une transposition au plus tard le 22 juin 1996. Faute de support juridique adéquat, la France n'a pas opéré ces ajustements" (*Bulletin Officiel du Travail, de l'Emploie et de Formation Professionnelle* 20 March 2001).

29 Letter of formal notice for non-notification (1997), reasoned opinion for non-notification (20.1.1998), transferral to the ECJ (2.12.1998). The judgement of the European Court of Justice (second chamber) from 8 June 2000 reveals that the reasoned opinion was sent on 20 January 1998. "By letter of 13 March 1998 the French authorities replied to the reasoned opinion, first of all by reiterating that numerous national provisions already complied with the Directive and, secondly, by pointing out that the provision in the Directive on the period of weekly rest was soon to be transposed by a draft law which also transposes Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work (OJ 1994 L 216, p. 12)" (European Court of Justice 2000).

year. The threat of financial sanctions increased the external pressure to a degree at which opposition and 'sticking to the national model' was no longer a viable solution.[30]

The *Swedish government* openly refused to correctly implement the *pregnant workers Directive*. Most parts of the pregnant workers Directive were transposed in Sweden without further problems and approximately in time.[31] One aspect though – the introduction of two weeks compulsory maternity leave – was not implemented until August 2000, i.e. roughly six years after the end of the transposition period, and after the European Commission had started an infringement procedure.[32] This is quite surprising as Sweden generally belongs to the member states with rather good and timely implementation records[33] and the protection of pregnant workers is well developed.

In this case though, Sweden clearly opposed the transposition of the two weeks of *compulsory* leave and tried to insist on the national rule. Similar to the French cases, the Swedish government was convinced that their previous system was actually better than the regulation of the Directive. Due to the preceding rules Swedish women had been free to decide for how long they wanted to abstain from the labour marked due to pregnancy, and this system had worked successfully. Therefore, the government did not see any need to change well established rules, especially as the legal change was not expected to alter anything in the actual practice and habits of Swedish women.[34] Only after the interference of the European Commission did they finally give in and introduced the compulsory leave which in their eyes was completely superfluous.

The following section, however, will highlight that such instances of politically motivated non-compliance tell only a part of the whole story.

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30 Some standards had already been transposed with the second *Loi Aubry* (37/2000) on 19 January 2000. The remaining misfit was tackled a year later by an *ordonnance* on 3 January 2001. The infringement procedure was subsequently stopped on 23 May 2001.

31 Meaning no later than six months after the end of the transposition period.

32 Letter of formal notice for incorrect transposition (30.12.1998), reasoned opinion for incorrect transposition (6.8.1999).

33 See e.g. Commission Européenne (2001:126 and 144).

34 The government's official position was that the pre-existing 12 (later 14) weeks of *optional* maternity leave *de facto* guaranteed exactly the same level of protection. They argued that women in Sweden generally made use of the maternity leave for much longer than two weeks so that there was no need to change the legal rules in order to prescribe the leave (interview S8:411–456).

3. Non-compliance for administrative reasons

In addition to deliberate opposition, *administrative problems* are an at least equally important reason for non-compliance with EU law in our sample. Several cases show that even if the necessary adaptations are not of major size and importance (small or medium misfit at most) and even if the government as such is not un-willing to transpose, there may still be a delay or (less frequently) an incorrect transposition. In quite many cases this can be attributed to administrative shortcomings.[35]

The country where this pattern most clearly occurs is *Luxembourg*. Of our 23 infringement cases related to our six Directives and 15 member states, Luxembourg alone covers five (see Table 1). Among those, only one infringement measure of the European Commission (a reasoned opinion for incorrect transposition of the *pregnant workers Directive*) was not caused by administrative, but by interpretation problems (see also section 4 below). The main reason for the frequent occurrence of this factor is administrative overload due to a lack of resources in the small country. Equipped with a comparatively low number of staff, the administration is constantly at its limits, having to deal with the national as well as the increasing number of European matters. Under these circumstances, especially when the Directives do require rather small details to be changed, the priorities of the respective administrative units are focussed on the major national or European reform projects rather than on issues were pre-existing national rules already assure (more or less) appropriate protection (interview LUX1:1000–1034). This pattern explains why five of the six Directives in our sample were transposed with a tremendous delay of up to five years (young workers Directive) in Luxembourg, despite (or maybe more appropriately: *because of*) the fact that they only caused small or at most medium-sized adaptations. Interestingly, the only Directive creating high misfit in Luxembourg, the *parental leave Directive*, was transposed almost in time.

In other countries administrative problems also do occur. E.g. regarding the *work contract Directive*, *Italy* received a reasoned opinion because of non-notification.[36] Large misfit or controversial issues in the Directive, which could have attracted the interest of veto players, can be excluded as reasons for this three year delay. Even before the Directive had to be implemented, a written information or contract to inform employees of the conditions of the working relationship had already been quite common in Italian practice. On the social partners' part, therefore, not very much attention was paid to this Directive (interview I8:29–102). The Italian government even seemed to have welcomed the European provisions as a

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35 Of course these administrative problems can also occur in combination with other factors. If e.g. a transposition process is delayed due to issue linkage (more details see chapter 4), it is also plausible that an inefficient administration can extend the delay additionally.

36 Letter of formal notice for non-notification (1993), reasoned opinion for non-notification (1996).

means to bring together the different pre-existing rules under the heading of one piece of legislation (interview I4:196–255). Nevertheless, Italy's administrative inefficiency[37] hampered timely implementation measures.

In sum, these cases demonstrate that besides more 'political' factors like deliberate government opposition, administrative shortcomings can also play an important role for non-compliance. Sufficient financial or personnel resources are crucial for efficient implementation (see e.g. Bichler 1995; Siedentopf 1997).

4. Non-compliance due to issue linkage

In addition to government opposition and administrative problems, a further variable is of considerable importance in our case studies: *issue linkage*. It is a broad category which refers to all those cases where the member state transposed – or tried to transpose – a Directive in connection with other issues. They can either be thematically related to the subject of the Directive or extraneous.

In EU social policy, linkage of implementation to closely related national reforms is often almost inevitable since in almost all member states specific labour regulation existed prior to the European Directives. Reforms or at least debates on labour law issues with conflicting positions from both sides of industry on issues such as labour market flexibilisation in the broadest sense have been the rule in recent years. Above all, working time issues are typically high on the agenda. Therefore, it comes as no surprise that the linkage to national debates can explain the delayed transposition of the EU *working time Directive* in four out of six delayed cases in our sample (*France, Greece, Italy* and *Portugal*).

Portugal is an example for linkage with broader and multi-actor reform processes that had already proven to be difficult *per se*. Government and social partners had classified the transposition of the EU *working time* and EU *young workers Directive* as specific legal operations to be tackled within a social pact signed on 20 December 1996 (Commission Permanente de Concertation Sociale du Conseil Économique et Social 1996: 99).[38] Ongoing

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[37] In the literature, the Italian administration is often described as highly fragmented with overlapping competencies between old and new regulations, which may cause serious co-ordination problems. For further details see e.g. Cananea (2000)or Gallo (2002). It has to be mentioned that the transposition of this Directive (adopted at the beginning of the 1990s) fell into a period with difficult changes in government, in particular from the Andreotti (*Democrazia Cristiana*) to the Amato (left-liberal) government in 1992. The period until the Directive was finally transposed saw the so called "technocrat governments" (Ciampi 1993/1994 and Dini 1995/1996), divided by a short interplay of Berlusconi (1994) and followed by the Prodi government (1996–1998). It is clear though, that this Directive was not important enough to become a "politically significant issue", which might have led to conflicts among the parties in government or parliament and a therefore delayed transposition. Thus, we consider administrative problems to be the main reason for the delay in implementation.

[38] Note that at this date the transposition period had already expired for both Directives.

national discussions revolved around issues that lay in the realm of the EU provisions. For *working time*[39], the government tried to keep particularly controversial issues out of the transposition discussion (such as the question what to count as effective working time and what time to consider as breaks).[40] Since the employers and unions tried to interpret the Directive in a way that would support their position on this point (interviews P3:441–457, P4:309–317, P2:612–641 and 472:500), the government could not prevent controversies, as an interview partner in the ministry reported: "The Directives are important, but on the national level it is more the social partners, the internal politics, that are important" (interview P1:485–488, translation MH). The working time law 73/98 was finally adopted on 10 November 1998 with a delay of two years.

For the implementation of the *young workers* Directive[41] in *Portugal* the situation was similar. Here external and internal pressure to tackle child labour had led to a broad national reform process (interview P3:1010–1046). It took place parallel to the negotiations in Brussels and even continued thereafter.[42] To the dynamic of the reform process came, as an additional factor, the specific requirements to comply with the EU Directive. Even though willingness existed, in principle, to legislate on the issue and to implement the Directive, special aspects – such as the concept of light work – had already been debated very controversially. Existing conflicts on the issue seemed hot or relevant enough to now hinder timely transposition.[43] Transposition finally took place with law 58/99 in May 1999.[44]

The case of delayed transposition of the *working time* Directive[45] in *France* is different. Here, EU-related adjustments to national laws concerning daily rest and breaks, as well as health and safety checks, were saddled onto the 35 hour week flagship reform of the Jospin

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39 Letter of formal notice for non-notification (1997), reasoned opinion for non-notification (1998).

40 The whole discussion on working time reduction had been very controversial during the years prior to the transposition (interview P2:551–573).

41 Letter of formal notice for non-notification (1997), reasoned opinion for non-notification (1997).

42 In this national reform process the ILO convention N°138 was also implemented, but earlier than the Directive (interview DK6:832–853). The Short Term Social Pact signed in January 1996 under the initiative of the Socialist government introduced stricter regulation for child labour. (Petmesidou 2001:85).

43 As a reaction the *Confederacao Geral dos Trabalhadores Portugueses* (CGTP, communist trade union) critically declared that a clearer concept of what to consider light work would be needed. The *Confederacao do Comércio e Servicios de Portugal* (CCP, service sector employers' organisation) welcomed the draft, stating that it did not require major changes to existing regulation – except for additional reduction in working hours and two days weekly rest. *Uniao Geral de Trabalhadores* (UGT, trade unions) had already highlighted the problem in their 1 May celebrations. Their demands were not related to the EU Directive, but figured around a decent minimum wage to help families survive without recourse to child work, heavier fines, and more intervention from the labour inspection (Cristovam 1998).

44 Approved by the *Assembleia da República* on 13 May 1999 and published in the Official Journal on 30 June. Later light work was defined by decree law 170/2001 on 25 May 2001. Law 61/99 of 30 June regulated working time for young workers, and law 118/99, adopted on 11 August, dealt with sanctions and punishment in cases of non-compliance with the bundle of legislation for young workers (interviews P2:731–1007 and P8:672–725).

45 Letter of formal notice for non-notification (1997), reasoned opinion for non-notification (12.2.1998), decision for transferral to the ECJ (2.12.1998) and ruling in case 46/99 by the ECJ (8.6.2000) (European Court of Justice 2000).

government. In this context, the EU standards – even if described as "the first evidence of social Europe" (interview F4:1432, translation MH) – did not cause trouble because of their controversially discussed specific policy standards or regulation mode (e.g. the light work concept in the young workers directive or the effective working time notion in Portugal). While the controversial national debate centred on non-EU issues of working time regulation, transposition of the working time Directive took an excessive amount of time because of the functional linkage to the national reform laws *Loi Aubry I* (98/461) and *Loi Aubry II* (37/2000).

Sometimes issue linkage is pursued for some time. Then it becomes clear that transposition on the basis of this linkage is impossible, the transposition is unlinked, and the discussion of critical points is transferred to a later reform. Often times, this is related to rising external pressure from Brussels or to the government's realising that the transposition is running the risk of being late. Then the country may choose a particularly fast transposition of the EU-related aspects via a rather easily manageable instrument, such as a presidential decree. The big trunks of the national discussion or potential exceeding implementation aspects to the European law are sometimes left for a national law later to follow.

This was the case when it came to transposition of the *working time* Directive in *Greece*. In June 1998 the Greek government announced a bill on the regulation of labour relations and other provisions. Amongst the arguments pledging for change was the EU Directive on working time (Soumeli 1998a). A national expert explained that the national discussion on working time flexibilisation was and continues to be lively.[46] After Greece received a reasoned opinion for non-notification on 2 December 1998, government decided not to risk further steps of an infringement procedure and drafted a presidential decree in August 1998 (Soumeli 1998b). "For the presidential decree 88/99 there probably were no discussions, everything passed smoothly. The Labour Ministry prepared the decree and the president adopted it, there is no debate in parliament, it just happens. (…) And probably a later national law specifies critical points." (interview GR15, translation MH). And indeed, annualised reference periods agreed by the social partners were finally allowed by law 2874/00 (interview GR9:504–536). Annualisation of working time had been broadly discussed even before the EU working time Directive. This major conflict line ran through the whole reform process and had slowed down decisions at different points. However, there is no compulsory standard to this effect in the EU Directive annualisation is only mentioned as an option.

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[46] "Until 1993 flexibilisation was hardly discussed. Then a conservative government made attempts to introduce elements of flexibilisation but there was a rebellion, some things have been formally introduced, but nothing changed in practice. Then gradually the following social government tried as well to introduce elements of flexibilisation and still there was a lot of rebellion, even though trade unions are in majority socialist members. There was a party internal battle" (interview GR15, translation MH).

These and further examples (*working time, young workers protection* and *parental leave* in *Italy*) show that issue linkage is often a reason for delayed transposition, but that the details of the linkage, its timing, and its persistence are crucial for determining the practical effects on the implementation of EU Directives. These aspects will be discussed in the conclusions.

5. Non-compliance due to interpretation problems

Besides political opposition, administrative problems, or issue linkage with contested or protracted national reform processes, infringement proceedings against allegedly non-compliant member states may also be due to contested interpretations of what European law actually requires member states to do.[47] Due to the multitude of actors and arenas involved in the EU decision-making process, and to the ensuing multitude of different views which have to be taken on board in the course of that process, European Directives are often loosely worded in order to accommodate differences in the decision-making process. In addition, policy-making in the European Union is faced with general limits of defining adequate legal provisions that provide clear-cut solutions for 15 diverse national settings. As a consequence, the resulting European policies are often open for different (maybe even equally plausible) interpretations. In such cases, infringement proceedings or a ruling by the European Court of Justice may be the only way to clarify that one particular interpretation is more adequate.

Problems of interpretation are all the more likely if those who have to transpose a Directive are not directly involved in its negotiation. This constellation is particularly likely in European social policy, where some Directives are based on agreements concluded by the European peak-level organisations of business and labour. Normally these Directives still have to be implemented by national governments.[48]

The infringement proceedings initiated against the *UK* and *Ireland* with regard to the transposition of the *parental leave* Directive resulted exactly from such interpretation difficulties. The governments of both countries were generally favourable to the Directive's aim of providing working parents with a right to parental leave in order to take care of their children for a period of up to three months. Pressurized by employers' organisations, however, they decided to introduce a "cut-off date" which limited the parental leave entitlement to parents whose children were born after the coming into force of the Directive (in the case of Ireland) or the implementation legislation (in the British case) respectively.

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47 For sure, a particular national interpretation can potentially just be another means to hide opposition. This is not what we discuss in this sub-section.

48 For a thorough analysis of the functioning of this corporatist procedure, see Falkner (1998) and Hartenberger (2001).

The trade unions in both countries held this for contradictory to the Directive, which, however, was denied by employers' organisations (interviews GB2:184–195, 531–552 and IRL1:250–263).

The dispute between the two sides of industry played a decisive role in these cases since the parental leave Directive had been based on an agreement between the peak organisations of business and labour at the European-level. Hence, the same actors that had negotiated the parental leave deal in the first place now had conflicting views about the interpretation of their own agreement. Since the Irish and British governments had decided to follow the employers' interpretation, the trade unions turned to the European level in order to clarify the matter. The Irish Congress of Trade Unions filed a complaint with the European Commission who in turn initiated an infringement proceeding against Ireland (interview IRL1:880–921).[49] In the UK, the Trades Union Congress brought a case against the government to the High Court in London, which was subsequently referred to the European Court of Justice for a preliminary ruling (interview GB6:270–277, see also Taylor 2000a; 2000b). At the same time, the Commission also initiated an infringement proceeding against the UK.[50]

Since the European-level social partners had explicitly requested in their agreement that "any matter relating to the interpretation of this agreement at European level should, in the first instance, be referred by the Commission to the signatory parties" (Clause 4.6 of the Agreement), the Commission consulted representatives of UNICE (Union of Industrial and Employers' Confederations of Europe), CEEP (European Centre of Enterprises with Public Participation) and ETUC (European Trade Union Confederation) in order to clarify the matter. The European peak organisations of business and labour finally supported the Commission's interpretation that the cut-off dates introduced in Ireland and the UK were contrary to the parental leave Agreement.[51] On the basis of this clarification, the Irish and British governments subsequently agreed to amend their legislation in such a way that the cut-off date would be repealed.[52]

In sum, these cases demonstrate that the inherent legal ambiguity of some European Directives may give rise to interpretation problems which subsequently have to be clarified by infringement proceedings.

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49 Letter of formal notice for incorrect transposition (11.3.1999) and reasoned opinion for incorrect transposition (3.4.2000).

50 Reasoned opinion for incorrect transposition (2.4.2001).

51 The text of the reasoned opinion issued by the European Commission against Ireland is reprinted in Clauwaert/Herger (2000: 117–118). This document also describes the process of consultation with the European-level social partners.

52 For Ireland, see the European Communities (Parental Leave) Regulations, 2000, Statutory Instrument 2000. In the UK, the cut-off date was repealed by *The Maternity and Parental Leave (Amendment) Regulations* 2001, Statutory Instrument 2001 No. 4010.

6. Conclusion

Do the member states regularly practice "opposition through the backdoor" by not transposing EU Directives into national law? We presented evidence from our survey of six Directives and their implementation in all 15 EU member states. In this paper, we looked at those 23 cases that were enforced with advanced infringement proceedings sustained by the European Commission.[53]

Indeed, deliberate *opposition* by national governments is one reason why member states fail to comply with European standards. Among the 23 infringement proceedings in our sample which have at least reached the stage of "reasoned opinion" (see Table 1), there were six cases where intentional opposition against adaptation by the respective national governments was the main reason for non-compliance. There are two variants of the opposition pattern: outright "opposition through the backdoor", meaning cases where governments which had not wanted a Directive (or specific aspects thereof) later do not implement it correctly; and the wish to protect the national system without significant dispute at the prior EU decision-making stage. This category can be further differentiated into countries which could not show opposition and those that chose not to do so (France versus Sweden).

In addition to outright opposition, another important factor in our cases of non-compliance was *issue linkage*. With seven cases out of 23, this factor is quantitatively even more important. As outlined in section 4, issue linkage can occur with issues more or less closely related to the standards of the EU Directive to be implemented and, partly related to this, it can be more or less voluntary. In cases where in the very same issue area a national reform process has already been going on (as is often the case with working time regulation), it is plausible that governments cannot easily set the implementation of EU law apart from the other reforms under consideration.

In further cases, however, issue linkage may be used to practice a hidden form of opposition to the required changes, or, by contrast, to speed up national transposition. Issue linkage as such does not say much about good or bad implementation records. The effect on the implementation performance depends on additional factors, for example situational or structural political factors; the point in time when the transposition of the Directive is linked to an issue; or whether the added-on issue is discussed controversially or not. As a consequence, timely transposition can be assured by saddling the transposition of a Directive on an almost finished reform process where the legislative machinery is at a point

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[53] In later papers, we shall look at our material "the other way round". Where did the EU standards demand significant adaptation, and how smooth was national change then? And: looking at those cases with high misfit and national *non*-compliance, did the Commission actually initiate and pursue infringement proceedings?

which produces rapid outcomes.[54] By contrast, timeliness is difficult to assure where the transposition of a Directive is introduced into an ongoing but extremely controversial decision process with many stakeholders and veto-players. For example, if transposition of a European Directive is linked to a national social pact where many issues are linked and multiple concessions have to be made.

A factor in our sample quantitatively as important as opposition is *administrative shortcomings* as the prime source of transposition failure (six cases in total). For this reason, five of the six Directives in our sample were transposed with a tremendous delay of up to five years (young workers Directive) in Luxembourg, despite (or better: *because of*) the fact that they only caused small or at most medium-sized adaptation. In contrast, the only Directive creating high degrees of misfit in Luxembourg, the *parental leave Directive*, was almost transposed in time. This contradicts scholarly expectations that effective implementation arises from low adaptation pressure where "EU requirements basically confirm existing national arrangements, requiring no or only negligible adaptations" (Knill/Lenschow 1998: 610), and that "(o)nly if the implementation of an EU policy requires considerable legal and administrative changes imposing economic and political costs on the public administration, implementation failure should be expected" (Börzel 2000a: 225; for similar expectations, see e.g. Duina/Blithe 1999: 499). Our cases indicate that even very small misfit may lead to non-compliance, e.g. where the national administration is overburdened or inefficient, and where national actors have a strong (often ideologically founded) hostility against even minor changes to their way of doing.

Finally, we also found that *interpretation problems* cause implementation problems in a more than negligible number of cases (four out of 23, see section 5). With a view to the *theoretical considerations* presented in the introduction, it therefore seems that all the factors mentioned in the literature can play a role, including opposition; administrative shortcomings; and interpretation problems.

This indicates that, in any case, transposition shortcomings are *more than just opposition through the backdoor.*

This adds to other limitations of what has been coined the multi-layer perspective on transposition in the introduction, where nation states use the lower level arena to protest against decision of the higher level. Among the practical limitation of such a narrow view of the EU's implementation problems is, most importantly, the fact that visible non-implementation is no longer a viable final solution. The threat of financial sanctions as introduced with the Maastricht Treaty, in addition to prior "naming and shaming" in the

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[54] Correctness, by contrast, might be more difficult to attain in these cases since there can be less room for detailed change when the added-on reform is almost finished.

infringement proceeding, have so far made every non-compliant Member State implement the relevant standards in the end. Changes in government, such as in the UK from Tory to Labour, promote the compliance with EU law in the long run, as well.

Our cases indicate, on top of that general aspect, that there are also cases of opposition at the "rear end" of the EU policy process at national level that are not connected to "front end" opposition during the adoption of the relevant Directives. That is one further indicator for two aspects described in the less intergovernmentalist integration theory schools and in earlier empirical studies: that the member states cannot fully control their agents in the EU Council, and that there are many unintended consequences of European integration – not in the least place, unforeseen misfit in the member states.

References

Bichler, Marc, 1995: The Case of Luxembourg. In: Spyros A. Pappas (ed.) *National Administrative Procedures for the Preparation and Implementation of Community Decisions*. Maastricht: European Institute of Public Administration, 359–373.

Börzel, Tanja A., 2000a: Improving Compliance through Domestic Mobilisation? New Instruments and Effectiveness of Implementation in Spain. In: Christoph Knill/Andrea Lenschow (eds.), *Implementing EU Environmental Policy. New Directions and Old Problems*. Manchester: Manchester University Press, 222–250.

Börzel, Tanja A., 2000b: Why There Is No 'Southern Problem': On Environmental Leaders and Laggards in the European Union. In: *Journal of European Public Policy* 7(1), 141–162.

Börzel, Tanja A., 2001a: Europeanization and Territorial Institutional Change: Toward Cooperative Regionalism? In: Maria Green Cowles/James Caporaso/Thomas Risse (eds.), *Transforming Europe: Europeanization and Domestic Change*. Ithaca: Cornell University Press, 137–158.

Börzel, Tanja A., 2001b: Non-Compliance in the European Union: Pathology or Statistical Artifact? Paper prepared for the conference "ECSA Seventh Biennial International Conference" (May 31–June 2, 2001), Madison.

Börzel, Tanja A., 2002: Pace-Setting, Foot-Dragging, and Fence-Sitting: Member State Responses to Europeanization. In: *Journal of Common Market Studies* 40(2), 193–214.

Börzel, Tanja A./Thomas Risse, 2000: When Europe Hits Home: Europeanization and Domestic Change. In: *European Integration Online Papers* 4(15) <http://eiop.or.at/eiop/texte/2000-015a.htm>.

Börzel, Tanja A./Thomas Risse, 2001: Die Wirkung internationaler Institutionen: Von der Normanerkennung zur Normeinhaltung. Preprints aus der Max-Planck-Projektgruppe Recht der Gemeinschaftsgüter 2001/15. Bonn: Max-Planck-Projektgruppe Recht der Gemeinschaftsgüter.

Cananea, Giancinto della, 2000: Italy. In: Hussein Kassim/B. Guy Peters/Vincent Wright (eds.), *The National Co-ordination of EU Policy. The Domestic Level*. Oxford: Oxford University Press, 99–113.

Cassell, Michael, 1992: PM Rejects European Super-State. In: *Financial Times*, 29.04.1992, 14.

Ciavarini Azzi, Giuseppe (ed.) 1985: *L'application du droit communautaire par les états membres*. Maastricht: European Institute of Public Administration.

Clauwaert, Stefan/Sabine Harger, 2000: *Analysis of the Implementation of the Parental Leave Directive in the EU Member States*. Brussels: European Trade Union Institute.

Commission des Communautés Européennes, 2000: Dix-septième rapport annuel sur le contrôle de l'application du droit communautaire (1999). COM(2000) 92 final. Bruxelles: Commission des Communautées Européennes (23.06.2000).

Commission des Communautés Européennes, 2001: Dix-huitième rapport annuel sur le contrôle de l'application du droit communautaire (2000). COM(2001) 309 final. Bruxelles: Commission des Communautées Européennes (16.07.2001).

Commission des Communautés Européennes, 2002: Dix-neuvième rapport annuel sur le contrôle de l'application du droit communautaire (2001). COM(2002) 324. Bruxelles: Commission des Communautées Européennes (28.06.2002).

Commission Européenne, Secrétariat général, 2001: Rapport sur l'application du droit communautaire par les États membres sur le contrôle de celle-ci par la Commission, contenant des recommandations en vue de les améliorer du point de vue de la gouvernance démocratique européenne. Bruxelles: Commission des Communautés Européennes <http://europa.eu.int/comm/governance/areas/studies/index_en.htm> (25.07.2001).

Commission of the European Communities, 1999a: Report from the Commission on the Implementation of Council Directive 92/85/EEC of 19 October 1992 on the Introduction of Measures to Encourage Improvements in the Health and Safety at Work of Pregnant Workers, and Workers Who Have Recently given Birth or Are Breastfeeding. COM(99) 100 final. Brussels: Commission of the European Communities (15.03.1999).

Commission of the European Communities, 1999b: Sixteenth Report on Monitoring the Application of Community Law. COM(99) 301. Brussels: Commission of the European Communities.

Commission Permanente de Concertation Sociale du Conseil Économique et Social (1996): Accord de Concertation Stratégique. In: Conselho Económico e Social.

Cristovam, Maria Luisa, 1998: Transposition of the young workers Directive and the child labour problem. EIROnline Document PT9807185. Dublin: European Foundation for the Improvement of Living and Working Conditions <http://www. eiro.eurofound.ie/1998/07/Feature/PT9807185F.html>.

Dimitrakopoulos, Dionyssis, 2001a: Learning and Steering: Changing Implementation Patterns and the Greek Central Governmnet. In: *Journal of European Public Policy* 8(4), 604–622.

Dimitrakopoulos, Dionyssis, 2001b: The Transposition of EU Law: 'Post-decisional Politics' and Institutional Economy. In: *European Law Journal* 7(4), 442–458.

Dimitrakopoulos, Dionyssis/Jeremy J. Richardson, 2001: Implementation of EU Public Policy. In: Jeremy J. Richardson (ed.) *European Union: Power and Policy-Making*. London: Routledge, 335–356.

Duina, Francesco G., 1997: Explaining Legal Implementation in the European Union. In: *International Journal of the Sociology of Law* 25(2), 155–179.

Duina, Francesco G., 1999: *Harmonizing Europe: Nation-States within the Common Market*. Albany: State University of New York Press.

Duina, Francesco G./Frank Blithe, 1999: Nation-States and Common Markets: The Institutional Conditions for Acceptance. In: *Review of International Political Economy* 6(4), 494–530.

EIRR, 1993a: April Labour and Social Affairs Council. In: *European Industrial Relations Review*, No. 231, 2.

EIRR, 1993b: Council Adopts Working Time Directive. In: *European Industrial Relations Review*, No. 239, 2.

EIRR, 1993c: Working Time Directive – Common Position. In: *European Industrial Relations Review*, No. 235, 15–18.

European Court of Justice, 2000: Judgment of the Court of 8 June 2000: Failure by a Member State to Fulfil its Obligations – Directive 93/104/EC – Organisation of Working Time – Failure to Transpose (Case C–46/99). In: *European Court Reports* 2000, I–04379.

Falkner, Gerda, 1998: *EU Social Policy in the 1990s: Towards a Corporatist Policy Community*. London: Routledge.

Falkner, Gerda, 2000: How Pervasive Are Euro-Politics? Effects of EU Membership on a New Member State. In: *Journal of Common Market Studies* 38(2), 223–250.

Gallo, Flaminia/Birgit Hanny, 2002: Italy: Progress Behind Complexity. In: Wolfgang Wessels/Andreas Maurer/Jürgen Mittag (eds.), *Fifteen into One: The European Union and Its Member States*. Manchester: Manchester University Press (forthcoming).

Hartenberger, Ute, 2001: *Europäischer sozialer Dialog nach Maastricht: EU-Sozialpartnerverhandlungen auf dem Prüfstand*. Baden-Baden: Nomos.

Haverland, Markus, 2000: National Adaptation to European Integration: The Importance of Institutional Veto Points. In: *Journal of Public Policy* 20(1), 83–103.

Héritier, Adrienne/Dieter Kerwer/Christoph Knill/Dirk Lehmkuhl/Michael Teutsch/Anne-Cécile Douillet (eds.), 2001: *Differential Europe: The European Union Impact on National Policymaking*. Lanham: Rowman and Littlefield.

Héritier, Adrienne/Christoph Knill/Susanne Mingers, 1996: *Ringing the Changes in Europe: Regulatory Competition and Redefinition of the State*. Berlin: de Gruyter.

Hooghe, Liesbet/Gary Marks, 2001: Types of Multi-Level Governance. In: *European Integration online Papers (EIoP)* 5(11) <http://eiop.or.at/eiop/texte/2001-011a.htm>.

House of Commons, 1996: *Hansard Debates*. Vol. 285, 12 November 1996. London: House of Commons <http://www.publications.parliament.uk/pa/cm199697/cmhansrd/vo961112/debindx/61112-x.htm>.

Jordan, Andrew, 1999: The Implementation of EU Environmental Policy: A Policy Problem without a Political Solution? In: *Environment and Planning C* 17(1), 69–90.

Jordan, Andrew/Neil Ward/Henry Buller, 1998: Surf, Sea, Sand ... and Sewage: Implementing European Bathing Water Policy in the United Kingdom and France. In: *Environment and Planning A* 30(8), 1389–1408.

Knill, Christoph, 2001: *The Europeanisation of National Administrations: Patterns of Institutional Change and Persistence*. Cambridge: Cambridge University Press.

Knill, Christoph/Andrea Lenschow, 1998: Coping with Europe: The Impact of British and German Administrations on the Implementation of EU Environmental Policy. In: *Journal of European Public Policy* 5(4), 595–614.

Knill, Christoph/Andrea Lenschow, 1999: Neue Konzepte – alte Probleme? Die institutionellen Grenzen effektiver Implementation. In: *Politische Vierteljahresschrift* 40(4), 591–617.

Knill, Christoph/Andrea Lenschow, 2000a: Do New Brooms Really Sweep Cleaner? Implementation of New Instruments in EU Environmental Policy. In: Christoph Knill/ Andrea Lenschow (eds.), *Implementing EU Environmental Policy. New Directions and Old Problems*. Manchester: Manchester University Press, 251–282.

Knill, Christoph/Andrea Lenschow (eds.), 2000b: *Implementing EU Environmental Policy. New Directions and Old Problems*. Manchester: Manchester University Press.

Knill, Christoph/Andrea Lenschow, 2001: Adjusting to EU Environmental Policy: Change and Persistence of Domestic Administrations. In: Maria Green Cowles/James Caporaso/ Thomas Risse (eds.), *Transforming Europe: Europeanization and Domestic Change*. Ithaca: Cornell University Press, 116–136.

Kommission der Europäischen Gemeinschaften (1994): Elfter Jahresbericht über die Kontrolle der Anwendung des Gemeinschaftsrechts (1993) KOM(94)500. In: Amtsblatt der Europäischen Gemeinschaften, Nr. C 154, 6.6.1994.

Kommission der Europäischen Gemeinschaften (1995): Zwölfter Jahresbericht über die Kontrolle der Anwendung des Gemeinschaftsrechts (1994) KOM(95)500. In: Amtsblatt der Europäischen Gemeinschaften, Nr. C 254, 19.9.1995.

Kommission der Europäischen Gemeinschaften (1996): Dreizehnter Jahresbericht über die Kontrolle der Anwendung des Gemeinschaftsrechts (1995) KOM(96)600. In: Amtsblatt der Europäischen Gemeinschaften, Nr. C 303, 14.10.1996.

Kommission der Europäischen Gemeinschaften (1997): Vierzehnter Jahresbericht über die Kontrolle der Anwendung des Gemeinschaftsrechts (1996) KOM(97)299. In: Amtsblatt der Europäischen Gemeinschaften, Nr. C 332, 3.11.1997.

Kommission der Europäischen Gemeinschaften (1998): Fünfzehnter Jahresbericht über die Kontrolle der Anwendung des Gemeinschaftsrechts (1997) KOM(98)317 (27.5.1998). In: Amtsblatt der Europäischen Gemeinschaften, Nr. C 250, 10.8.1998.

Mair, Peter, 2001: Backbenchers Learn to Fight Back: European Integration and Parliamentary Government. In: Klaus H. Goetz/Simon Hix (eds.), *Europeanised Politics? European Integration and National Political Systems*. London: Frank Cass, 27–51.

Marks, Gary/Liesbet Hooghe/Kermit Blank, 1996: European Integration from the 1980s: State-Centric v. Multi-Level Governance. In: *Journal of Common Market Studies* 34(3), 341–378.

Maurer, Andreas/Wolfgang Wessels (eds.), 2001: *National Parliaments on Their Ways to Europe: Losers or Latecomers?* Baden-Baden: Nomos.

Mendrinou, Maria, 1996: Non-Compliance and the European Commission's Role in Integration. In: *Journal of European Public Policy* 3(1), 1–22.

Moravcsik, Andrew, 1993: Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach. In: *Journal of Common Market Studies* 31(4), 473–523.

Petmesidou, Maria, 2001: Employment and labor market policies in South Europe. In: Martin Kohli/Mojca Novak (eds.), *Will Europe Work?* London: Routledge, 73–91.

Raunio, Tapio/Simon Hix, 2001: Backbenchers Learn to Fight Back: European Integration and Parliamentary Government. In: Klaus H. Goetz/Simon Hix (eds.), *Europeanised Politics? European Integration and National Political Systems*. London: Frank Cass, 142–168.

Rhodes, Martin, 1995: A Regulatory Conundrum: Industrial Relations and the Social Dimension. In: Stephan Leibfried/Paul Pierson (eds.), *European Social Policy. Between Fragmentation and Integration*. Washington, DC: The Brookings Institution, 78–122.

Schmidt, Vivien A., 1999: National Patterns of Governance under Siege: The Impact of European Integration. In: Reiner Eising/Beate Kohler-Koch (eds.), *The Transformation of Governance in the European Union*. London: Routledge, 155–172.

Schwarze, Jürgen/Ulrich Becker/Christina Pollack, 1991: *The 1992 Challenge at National Level: A Community-Wide Joint Research Project on the Realization and Implementation by National Governments and Business of the Internal Market Programme: Reports and Conference Proceedings 1990*. Baden-Baden: Nomos.

Schwarze, Jürgen/Ulrich Becker/Christina Pollack, 1993: The 1992 Challenge at National Level: A Community-Wide Joint Research Project on the Realization and Implementation by National Governments and Business of the Internal Market Programme: Reports and Conference Proceedings 1991/92. Baden-Baden: Nomos.

Schwarze, Jürgen/Inge Govaere/Frederique Helin/Peter van den Bossche, 1990: *The 1992 Challenge at National Level: A Community-Wide Joint Research Project on the Realization and Implementation by National Governments and Business of the Internal Market Programme: Reports and Conference Proceedings 1989*. Baden-Baden: Nomos.

Siedentopf, Heinrich, 1997: Umsetzung und Anwendung des Gemeinschaftsrechts in den Mitgliedstaaten. In: Siegfried Magiera/Heinrich Siedentopf (eds.), *Die Zukunft der Europäischen Union: Integration, Koordination, Dezentralisierung: Tagungsbeiträge der 64. Staatswissenschaftlichen Fortbildungstagung der Hochschule für Verwaltungswissenschaften Speyer vom 20. bis 22. März 1996*. Berlin: Duncker & Humblot, 105–126.

Siedentopf, Heinrich/Jacques Ziller (eds.), 1988a: *Making European Policies Work: The Implementation of Community Legislation in the Member States*. Vol. 1: Comparative Syntheses. London: Sage.

Siedentopf, Heinrich/Jacques Ziller (eds.), 1988b: *Making European Policies Work: The Implementation of Community Legislation in the Member States*. Vol. 2: National Reports. London: Sage.

Soumeli, Eva, 1998a: Bill on regulation of labour relations. EIROnline Document GR9807181F. Dublin: European Foundation for the Improvement of Living and Working Conditions <http://www.eiro.eurofound.ie/about/1998/07/feature/ GR9807181F.html> (28.07.1998).

Soumeli, Eva, 1998b: Presidential Decree proposed to implement working time Directive. EIROnline Document GR9808186N. Dublin: European Foundation for the Improvement of Living and Working Conditions <http://www.eiro.eurofound.ie/ about/1998/08/inbrief/ GR9808186N.html> (28.08.1998).

Stone Sweet, Alec, 1999: Judicialization and the Construction of Governance. In: *Comparative Political Studies* 32(2), 147–184.

Taylor, Robert, 2000a: Europe Asked to Rule on Parental Leave Case: TUC Claims ‘Clear Moral Victory’. In: *Financial Times*, 24.05.2000, 10.

Taylor, Robert, 2000b: Parental Leave Ruling Tested in Court: Cherie Booth Set to Represent TUC in Action Against Government. In: *Financial Times*, 16.05.2000, 6.

Weiler, Joseph H. H., 1988: The White Paper and the Application of Community Law. In: Roland Bieber/Renaud Dehousse/John Pinder/Joseph H. H. Weiler (eds.), *1992: One European Market? A Critical Analysis of the Commission's Internal Market Strategy*. Baden-Baden: Nomos, 337–358.

Zürn, Michael/Dieter Wolf, 1999: European Law and International Regimes: The Features of Law Beyond the Nation State. In: *European Law Journal* 5(3), 272–292.

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